

P.E.R.C. NO. 2016-26

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LIVINGSTON,

Petitioner,

-and-

Docket No. SN-2015-075

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 469,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Township of Livingston's request for a restraint of binding arbitration of a grievance filed by International Brotherhood of Teamsters Local 469. The grievance contests the Township's enforcement of a requirement that Department of Public Works (DPW) employees possess a commercial driver's license (CDL). The Commission holds that the Township has the managerial prerogative to determine the qualifications required of a job, including whether a particular license is required or desirable.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Genova Burns, LLC, attorneys
(Jennifer Roselle, on the brief)

For the Respondent, Timothy R. Hott, P.C., attorney

DECISION

On June 5, 2015, the Township of Livingston (Township) filed a scope of negotiations petition seeking restraint of binding arbitration of a grievance filed by the International Brotherhood of Teamsters Local 469 (Local 469). The grievance asserts that the Township violated the parties' collective negotiations agreement (CNA) and past practice by enforcing and/or changing a commercial driver's license (CDL) job requirement without negotiations.

The Township has filed briefs, exhibits, the certification of the Superintendent of the Department of Public Works (DPW), the certification of the Senior Foreman (Fleet Maintenance and Operations) of the DPW, and the certification of the Manager of

Human Resources (HR). Local 469 has filed a brief, exhibits, and the certification of its attorney. These facts appear.

Local 469 represents all non-supervisory blue collar employees within the DPW excluding managerial, confidential, and supervisory employees. The Township and Local 469 are parties to a CNA in effect from January 1, 2012 through December 31, 2015. The grievance procedure ends in binding arbitration.

According to the Superintendent, the DPW is responsible for maintaining Township property and roads including, but not limited to, maintaining roadways, leaf removal, garbage collection, street sweeping, and snow removal. The Superintendent certifies that many of the services/jobs that the DPW performs require special equipment, often requiring the operator(s) to have a CDL. As such, he certifies that maintaining a CDL has been a longstanding job requirement for DPW employees and that he regularly relayed the expectation that DPW employees had to maintain CDLs verbally and in meetings. Even when a CDL is not required, the Township prefers to assign a CDL driver to operate some of the larger equipment.

According to the Manager of HR, she began updating job descriptions for the DPW in or around spring 2014. Through this process, the Township decided to consolidate the DPW into "Maintenance" and "Senior Maintenance" positions only. The Manager of HR certifies that she reviewed prior job descriptions

and incorporated previous requirements into the new job descriptions, including the CDL requirement.^{1/} Draft job descriptions were sent to Local 469 in or around June 2014.

In or around summer 2014, the Superintendent and Senior Foreman certify that they began to have difficulties with staffing plans for fall and winter projects. Specifically, because DPW projects must be completed even if employees are absent, they struggled to develop contingencies for emergencies or for instances when employees were on leave, vacation, or out sick given that one-third of DPW employees did not maintain a CDL. As a result, and in order to have the flexibility necessary to properly staff and complete tasks, the Township determined that it had to enforce the CDL job requirement.

On September 15, 2014, the Superintendent issued a notice to DPW employees which attached applicable job descriptions, noted

1/ The Township has provided previous DPW employee job descriptions and the date same were prepared. Each has a CDL requirement except Custodian:

- Truck Driver (November 2006)
- Laborer (December 2007)
- Maintenance Worker (March 2009)
- Maintenance Worker - Building Maintenance Division (March 2009)
- Groundskeeper (December 2007)
- Senior Maintenance Worker (December 2007)
- Equipment Operator (November 2011)
- Landscape Technician (December 2007)
- Junior Mechanic (March 2008)
- Equipment Mechanic (December 2007)
- Fleet/Equipment Mechanic (March 2008)
- Senior Landscape Technician/Arborist (December 2007)
- Custodian (June 2009)

that a New Jersey CDL with air brake endorsement was a minimum job requirement, and provided employees until March 15, 2015 to come into compliance. On September 30, 2014, the Manager of HR held a meeting with Local 469 to discuss enforcement of the CDL requirement.^{2/}

On January 23, 2015, the Superintendent and Senior Foreman held a meeting with DPW employees to discuss the CDL requirement and compliance deadline.

On February 10, 2015, the Superintendent issued a follow-up notice to DPW employees reminding them of the CDL requirement and compliance deadline. On March 13, the Senior Foreman held a meeting with DPW employees to remind them of the CDL requirement and compliance deadline.^{3/}

2/ On October 13, 2014, a Local 469 representative sent an email to the Manager of HR seeking: (1) pre-2011 job descriptions for DPW employees; (2) the date and individuals present when the Superintendent had discussions with DPW employees; and (3) criteria for when an employee would be disciplined if unable to obtain a CDL. The Manager of HR responded via email on December 19, 2014 and certifies that she attached the requested job descriptions. Upon receipt of subsequent requests for the same information, the Manager of HR responded via email on January 5, 2015 and certifies that she provided the same information again. She also responded by letter on March 20, 2015 indicating that the requested information, which she certifies was produced again in hard copy, had previously been provided via email.

3/ Local 469 acknowledges that the facts in this case are "basically undisputed" as set forth in the certifications submitted by the Township. Therefore, we consider the issue raised in Local 469's grievance related to the provision of requested information to be moot given that the Manager of

(continued...)

On February 1, 2015, Local 469 filed a written grievance alleging that the Township violated the parties' CNA and past practice by enforcing a CDL job requirement. The grievance reads, in pertinent part:

The Township has changed the conditions of employment by instituting a mandate for employees to acquire a CDL license that was not part of their hiring requirement. The Township has not negotiated nor have they sought to negotiate any substantive changes to require this change and the Union objects to same.

The Township denied the grievance at all steps. On February 27, 2015, Local 469 demanded binding arbitration.^{4/5/} This petition ensued.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any contractual defenses that the

3/ (...continued)
HR certifies that she provided said information.

4/ Local 469 has also demanded binding arbitration in five related matters pertaining to the termination of DPW employees. Two were filed on April 14, 2015 (AR-2015-587 and AR-2015-588) and three were filed on June 23, 2015 (AR-2015-760, AR-2015-761 and AR-2015-762).

5/ Local 469 filed a related unfair practice charge (CO-2015-271) on May 26, 2015, which was amended on August 13, 2015, pertaining to the Township's enforcement of the CDL job requirement and subsequent employee terminations. Specifically, Local 469 alleges that the Township violated N.J.S.A. 34:13A-5.4a(1), (2) and (3) and 5.4(b).

employer may have. *Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed.*, 78 N.J. 144, 154 (1978).

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in *Local 195, IFPTE v. State*, 88 N.J. 393, 404-405 (1982):

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

We must balance the parties' interests in light of the particular facts and arguments presented. *City of Jersey City v. Jersey City POBA*, 154 N.J. 555, 574-575 (1998).

The Township argues that determining minimum job requirements for a job title, and identifying those who best meet those qualifications, is a managerial prerogative that is not subject to negotiations. In particular, the Township maintains that the CDL requirement is longstanding and the decision to enforce same is the result of Township and DPW needs.

Local 469 argues that the Township was obligated to negotiate regarding job qualifications and their consequences for certain DPW employees within the unit including, but not limited to, custodians. Even if the Township is found to have overcome its burden of generally being entitled to establish minimum job qualifications, the Township's own published job qualifications have not been enforced for many years and are so contradictory as to not be cognizable as a governmental policy.

The Township replies that an employer's managerial prerogative to determine qualifications, job descriptions and licensing does not end once an initial decision has been made but instead evolves and allows an employer to require additional job duties and qualifications.

The question that the Commission must consider here is whether the Township's decision to unilaterally enforce and/or change job requirements related to maintaining a CDL for DPW employees is mandatorily negotiable. Under the circumstances, we find that it is not.

The law is well-settled that public employers have a non-negotiable managerial prerogative to assign unit employees job duties related to their normal job functions. Borough of Madison, P.E.R.C. No. 2012-30, 38 NJPER 255 (¶86 2011); City of Newark, P.E.R.C. No. 2011-86, 38 NJPER 65 (¶11 2011); Rutgers, The State University, P.E.R.C. No. 84-45, 9 NJPER 663 (¶14287 1983). A public employer also has a managerial prerogative to

determine the qualifications required for a job. Borough of Madison; Tp. of Nutley, P.E.R.C. 2010-89, 36 NJPER 229 (¶81 2010); Edison Tp., P.E.R.C. No. 2010-39, 356 NJPER 442 (¶145 2009). Included in that prerogative is the determination as to whether a particular license is required or desirable for a position. Borough of Madison; West Windsor-Plainsboro Bd. of Ed., P.E.R.C. No. 2000-26, 25 NJPER 436 (¶30191 1999). To permit an arbitrator to determine whether CDLs are required for particular titles would significantly interfere with the Township's governmental policy objective of operating the DPW with employees that meet its desired minimum qualifications for the titles. Borough of Madison; City of Newark; Tp. of Irvington, P.E.R.C. No. 84-35, 10 NJPER 165 (¶15081 1984). Accordingly, the Township's request to restrain arbitration is granted.

ORDER

The request of the Township of Livingston for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos voted in favor of this decision. None opposed. Commissioners Jones and Wall were not present.

ISSUED: October 29, 2015

Trenton, New Jersey